

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

MACA.No. 1015 of 2005()

OPMV.743/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANTS/PETITIONER:

- *(1) SATHEESH, S/O. NANDAKUMAR,
ARAYANPARAMBIL HOUSE, KOTHAPARAMBU,
KODUNGALLUR, THRISSUR DISTRICT.(DIED)

ADDL.APPELLANTS 2, 3 AND 4:

2. MRS.SAJITHA, W/O.LATE SHATHEESH, ARAYANPARAMBIL
KOTHAPARAMBU, KODUNGALLUR.
3. NANDAKISHORE (MINOR) REP. BY GUARDIAN MOTHER SAJITHA,
W/O.LATE SATHEESH, ARAYANPARAMBIL, KOTHAPARAMBU,
KODUNGALLUR.
4. MRS.SATHEERATHNAM, W/O.LATE NANDAKUMAR,
ARAYANPARAMBIL HOUSE, KOTHAPARAMBU, KODUNGALLUR.

(*)(ADDL.APPELLANTS 2 TO 4 ARE IMPEADED AS LEGAL REPRESENTATIVES OF
THE DECEASED APPELLANT AS PER ORDER DATED 28.3.2006 IN IA NO.639/2006)

BY ADV. SRI.C.CHANDRASEKHARAN
SRI.P.VISWANATHA MENON

RESPONDENTS/RESPONDENTS:

- 1. ABUDL GAFOOR, S/O. HAMSA,
PUNCHAPADATH HOUSE, ABDULLA ROAD,
ARIAD VILLAGE, KODUNGALLUR,
THRISSUR DISTRICT.
2. M.B. MOHAMMED ANSARI,
S/O. BEERANKUTTI, MANAYIL HOUSE,
LOKAMALESWARAM, THRISSUR DISTRICT.
 3. THE ORIENTAL INSURANCE CO.LTD.,
PATTAMANA BUIDING, ALUVA.

4. K.T. JOSEPH, S/O. THOMAS,
MARCONI KOTHETHARA HOUSE, EDAVILANGU P.O.,
THRISSUR DISTRICT.

5. SAMUEL @ RAJU, KOTTALIKKAL HOUSE,
LOKAMALESWARAM, THRISSUR DISTRICT.

6. THE UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICE, IRINJALAKKUDA.

R6 BY ADV. SRI.S.MAMMU
R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.SHERRY J.THOMAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.A.C.A.No.1015 of 2005

Dated, this the 19th day of September, 2007

JUDGMENT

This appeal arises from an award passed by the Motor Accidents Claims Tribunal, Irinjalakuda dismissing the Original Petition filed by the deceased first appellant.

2. Deceased first appellant filed Original Petition initially impleading three respondents and subsequently three more respondents were added in the party array. It was averred that on 7.12.1993 at about 4.30 p.m. deceased first appellant was travelling in a scooter as pillion rider. His friend Raju was riding the scooter. It was averred that when the scooter reached near the place of occurrence another motor cycle bearing registration No.KL-8/9381 came in a rash or negligent manner, hit against the scooter in which the deceased first appellant was travelling and caused injuries to him. It was averred that accident occurred due to negligence of the first respondent who was riding the motor cycle. Subsequently first appellant impleaded the owner, rider and insurer of the scooter in which he was travelling.

3. Respondents 1, 4 and 5 did not appear and contest. Though second respondent appeared he did not file any objection. Third respondent filed written statement contending that there was no negligence on the part of the rider of the motor cycle. It was contended that accident occurred due to the rash or negligent

riding of the scooter. Quantum of compensation claimed is also disputed. Sixth respondent who was the insurer of the scooter in which the deceased first appellant was travelling did not file any written statement. Tribunal found that since the application was filed under Section 166 of the Motor Vehicles Act deceased first appellant was entitled to get compensation only by proving negligence on the part of the driver of the offending vehicle. It was found that the deceased first appellant failed to prove negligence either on the part of the rider of the scooter or on the part of the motor cycle and dismissed the Original Petition. Challenging that award this appeal is filed.

4. Learned counsel appearing for the appellants argued that the reasoning adopted by the Tribunal is unsustainable. It is argued that it was a collision of two vehicles and deceased first appellant was not a rider of either of the two vehicles and he was only a pillion rider. It is alleged that the accident might have occurred due to the negligence either on the part of the rider of the scooter or on the part of the rider of motor cycle or on account of the negligence of both. It is argued that first appellant who was travelling in the scooter as a pillion rider is entitled to get compensation in any case.

5. Even assuming that the deceased first appellant/claimant failed to establish negligence the Tribunal ought to have considered whether the claim can be considered under Section 163A of the Motor Vehicles Act or at least under Section 140 of the Act as the case may be. Dismissal of the entire petition is

unwarranted, unjustified and unsustainable. So I have no other option but to set aside the award passed by the Tribunal and remand the case for fresh disposal in accordance with law. It is open to the parties to amend the pleadings and adduce fresh evidence, if so advised.

In the result, appeal is allowed. Award passed on 17.2.2005 dismissing O.P.(MV) No.743/1994 is hereby set aside and the case is remanded to the Tribunal for fresh disposal in accordance with law. Parties shall appear before the Tribunal on 19.10.2007. Tribunal shall dispose of the Original Petition as expeditiously as possible, at any rate, within a period of four months from the date of appearance of the parties.

**K. PADMANABHAN NAIR,
JUDGE.**

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